IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 6934 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KUVATA SEVA SAHAKARI MANDALI LIMITED (PROPOSED)
Versus
KUVATA SEVA SAHAKARI MANDALI LIMITED & Otrs.

Appearance:
MR BM PATEL for Petitioner
None present for Respondent No.1, 2 and 4
MS MANISHA LAVKUMAR for Respondent No. 3 and 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision : 24/07/2000

C.A.V. JUDGEMENT

1. The petitioner, a proposed co-operative society, through its promoter Patel Raghavji Girdhariji, filed this

petition under Article-226 of the Constitution and prayed therein for quashing and setting aside the Order dated 14th August, 1997 passed by the Dy. Secretary (Appeal), Department of Agriculture and Cooperation, Annexure-F, and further prayer has been made for the restoration of the order dated 21st March, 1997 passed by respondent no.5, Annexure-C. The prayer has also been made for stay of the implementation and operation of the order dated 14th August, 1997, Annexure-F.

2. The petition was placed in the Court for preliminary hearing on 23rd September, 1997, on this day notice was issued to the respondents and status quo as on day was ordered to be maintained till returnable date. After 3rd October, 1997, the Order of grant of interim relief is not extended. The matter was admitted on 10/12/1999 and this Court has not granted any interim relief.

3. During the pendency of this Special Civil Application, respondent no.2 has expired on 28th June, 2000. On the request of the counsel for the petitioner, the name of respondent no.2 was deleted from the cause title.

4. The facts of the case, briefly stated, are that on 25th September, 1996 proposal for the registration of respondent no.1-society was accepted by respondent no.4 and proposal of the petitioner-society of its registration was rejected. The petitioner preferred an appeal against the decision aforesaid before the Addl. Registrar, Co-operative Societies (Appeal), Gujarat State at Gandhinagar which came to be rejected under Order dated 17th December, 1996, Annexure-A. From Annexure-A, it reveals that this appeal has been filed by the society, herein the petitioner, through its Chief Promoter, respondent no.2 (since deceased). The petitioner through respondent no.2 filed a revision application before respondent no.5 against the order of the Additional Registrar dated 17th December, 1996. This revision application has been filed on 10th March, 1997. The copy of this revision application is on the record and therefrom, it is clear that same was filed by the petitioner through respondent no.2. The revision application came to be allowed by respondent no.5 under its order dated 21st March, 1997 and the petitioner-society was ordered to be registered and the registration of respondent no.1 was cancelled. Against this order of respondent no.5, respondent no.1 preferred a writ petition, being Special Civil Application No.2597 of 1997, in this Court. On 25th June, 1997, respondent no.1 has withdrawn this Special Civil Application as it desires to make a review application before the Government for review of its earlier order dated 21st March, 1997. This prayer has been made in view of

certain developments which alleged to have been taken place and with a view to bring the same to the notice of revisional authority, as well as the relevant provisions of law bearing on the subject and the settlement that has been arrived at between the parties in the matter outside the Court. The respondent no.2 was impleaded in its individual capacity in Special Civil Application No.2597/1997, which is borne out from Annexure-E. It is not the case of the respondents that in Special Civil Application No.2597/1997, this society, the petitioner herein, was impleaded as respondent. The review application filed by respondents no.1 and 2 was came to be allowed by respondent no.5 on 14th August, 1997 and both Orders, Annexure-F and Annexure-C, were set aside. Hence, this Special Civil Application.

5. The deceased, respondent no.2, contested this petition. He filed reply to the Special Civil Application which is there on the record. Other respondents have not filed reply to the Special Civil Application, meaning thereby, they are not contesting the petition. The absence of respondent no.1 in the Court today shows that it has no interest in matter and may have thought of not to oppose this Special Civil Application.

6. The learned counsel for the petitioner contended that respondent no.5 has no jurisdiction to review its earlier order as the statute does not provide for review of the order. In his submission, there is no provision in the Gujarat Co-Operative Societies Act, 1961, which empowers respondent no.5 to review its own order. Second contention raised is that the notice of the review application was not issued to the petitioner and the impugned order was obtained by the respondent nos. 1 and 2 behind the back of the petitioner. The order impugned in this Special Civil Application as being passed in violation of the principles of natural justice, it is void ab initio. Lastly, it is contended that fraudulently this Order has been obtained by respondent no.1 in collusion with respondent no.2. Carrying this contention further, the learned counsel for the petitioner urged that respondent no.2 alone had no power and authority to decide to withdraw the proposal and to consent for the registration of respondent no.1 society is against the interest of petitioner-society. The settlement in the matter in between the petitioner-society and respondent no.1 was never entered into. So, it is a clear case, what he submitted, of acting of the respondent no.2, detrimental to the interest of the petitioner-society and in favour of respondent no.1. To highlight the fraudulent conduct of respondent no.2, the learned counsel for the petitioner made reference to the averments made in paragraph no.3 of the

7. None present on behalf of the respondent nos. 1, 2 and 4. Ms. Manisha Lavkumar for respondent nos.3 and 5 supported the orders passed by the authorities.

8. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties present. The reply to the Special Civil Application is there on behalf of respondent no.2. The respondent no.2 even if it is taken to be the Chief Promoter of the petitioner-proposed society, he was one of the promoters and he alone could not have taken the decision to compromise the matter with respondent no.1. It is not a dispute that in the Special Civil Application filed by respondent no.1, being Special Civil Application No.2597 of 1997, the respondent no.2 was the party in its individual capacity. All the promoters of the petitioner-society were not impleaded as a party in that Special Civil Application. The order of the State of Gujarat dated 21st March, 1987 passed in the revision application filed by the petitioner through respondent no.2, has been challenged. Under the order aforesaid, the petitioner-society was ordered to be registered and registration of respondent no.1 was cancelled. The compromise has been entered into by respondent no.2 without taking all other promoters of the petitioner-society in confidence. All the ten persons are to be called to take the decision. It is a case where possibility of fraud of respondent no. 2 to the petitioner cannot be overruled.

9. The Special Civil Application is filed by respondent no.1 and therein, I find that he has failed to give out that all other promoters of the petitioner-society have agreed to the registration of respondent no.1. In the review application which has been filed by respondent no.1, respondent no.2 has given its consent for the registration of respondent no.1-society. In the affidavit, respondent no.2 has stated that he alone has no power or authority to decide to withdraw the proposal for registration of petitioner-society and to consent to registration of respondent no.1 society. He has failed to produce any documentary evidence or any other proof that all other members or promoters of the petitioner-society were consulted and then only, the affidavit has been filed by him in the writ petition of respondent no.1 for the settlement of the matter. The say of the respondent no.2, only on the basis of the affidavit which is not accepted by the petitioners, is difficult to accept. Out of other

members/promoters of the petitioner-society, respondent no.2 has not filed the affidavit of any of them. This is a matter where the respondent no.2 should have taken all care. The respondent no.2 has not produced any material on record to show that collectively decision has been taken for withdrawal of the application of the petitioner for registration. It is a clear case where the other members/promoters of the petitioner-society have been deprived of their right to apply for the registration of the society. In the review application, the State Government should have given notice to all the members/promoters of the petitioner-society. Behind the back of the members/promoters of the petitioner-society, the compromise has been arrived at and on the basis of which the decision has been obtained by respondent no.1 in its favour. The petitioner-society was registered, and that decision could not be successfully challenged by respondent no.1 before this Court. That writ petition has been withdrawn by respondent no.1 as it desires to file a review application and this all have been done in collusion with respondent no.2. In the facts of this case, the order of the State Government made on the review application of respondent no.1 cannot be allowed to stand.

10. As a result of which, this Special Civil Application succeeds and the same is allowed and order dated 14th August, 1997 passed by the Dy. Secretary (Appeals), Department of Agriculture and Cooperation, Government of Gujarat is hereby quashed and set aside and the matter is sent back to the said authority for deciding the review application afresh in accordance with the law, after giving a notice to all the members/promoters of the petitioner-society. The rule is made absolute accordingly with no order as to costs.

(S.K. Keshote, J.)
(kamlesh)